

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Robert Payne,
a/k/a Robert Harvie Payne,

Plaintiff,

VS.

CCDC Jailer Puritis, and
Charleston County,

Defendants.

) C/A No. 6:11-1716-DCN-KFM

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Order

This case is before the Court because of Plaintiff's failure to comply with the magistrate judge's Order of November 30, 2011. (ECF No. 29).

A review of the record indicates that the magistrate judge ordered Plaintiff to submit updated service forms needed to effect service of process in this case because the United States Marshal indicated an inability to serve Defendants with the documents originally submitted by Plaintiff. Plaintiff was specifically informed that if he failed to do so, this case would be dismissed *without prejudice*. The time for Plaintiff's compliance has now passed with no response from Plaintiff to the most recent Order. The mail in which the Order was sent to Plaintiff at the address provided when the case was filed has not been returned to the Court, thus it is presumed that Plaintiff received the Order, but decided not to comply with it.

Plaintiff's lack of response to the Order indicates an intent to not continue prosecuting this case, and subjects this case to dismissal. See Fed. R. Civ. P. 41(b)(district courts may dismiss an action if a Plaintiff fails to comply with "any order of the court."); see

also *Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989)(dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982)(court may dismiss *sua sponte*).

Accordingly, this case is dismissed *without prejudice*. The Clerk of Court shall close the file.¹

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', written over a horizontal line.

David C. Norton
United States District Judge

January 6, 2012
Charleston, South Carolina

¹ Under General Order, Misc. No. 3:07-5014-JFA, this dismissal *without prejudice* does *not* count as a “strike” for purposes of the “three strikes” provision of 28 U.S.C. § 1915(g). If Plaintiff wishes to bring this action in the future, he should obtain new forms for doing so from the Clerk’s Office in Columbia (**901 Richland Street, Columbia, South Carolina 29201**).

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within the time period set forth under Rules 3 and 4 of the Federal Rules of Appellate Procedure.
